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Ref No 2109229 03/015435 00010099999 00005

August 31, 2020

Via Email sanga.ravi@epa.gov and via Messenger or U.S. Mail with Flashdrives

Mr. Ravi Sanga
Remedial Project Manager
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 900, MS ECL-122
Seattle, Washington 98101

Re: Harbor Island Superfund Site, East Waterway Operable Unit
King County, Washington
Response to Request for Information and Documents
Section 104(e) of CERCLA, 42 U.S.C. § 9604(e)

Dear Mr. Sanga:

This firm represents Rainier Commons, LLC (“Rainier Commons”), the owner of the property known as Rainier Commons, located general at 3100 Airport Way S (on the east side of Airport Way), in Seattle, Washington. Rainier Commons occupies a portion of the Old Rainier Brewery property. The property on the west side of Airport Way is part of Sound Transit’s facility. The property on the west side of Airport Way was never owned or operated by Rainier Commons LLC.

Attached please find Rainier Commons’ responses to EPA’s Section 104(e) Request for Information and Documents, dated March 10, 2020, received on March 16, 2020, pertaining to the East Waterway Operable Unit of the Harbor Island Superfund site (“EWOU”). The response time was extended by agreement and we appreciate EPA’s courtesies in this regard, during the COVID19 disruptions and shut down. Also attached is Rainier Commons’ Declaration requested in connection with its answers and responses.

Also enclosed with the hardcopy of this response are two USB flashdrives. The flashdrive with Confidential Business Information is segregated and delivered in a sealed envelope marked confidential. Rainier Commons asserts its rights 42 U.S.C. §9604(e)(7)(E) and 40 U.S.C. 2.203(b) to have this information protected and kept confidential. The information segregated as confidential has not been provided to any other party that is not bound by duties and obligations of confidentiality. Rainier Commons has taken steps to and expects to keep this information confidential. The information is not required to be disclosed or made available to the public by

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any other law or regulation. Disclosure of the information is likely to cause substantial harm to Rainier Commons, including its competitive position.

The flashdrives being produced are password protected in conformance with our firm's policy for protection of client records. We will send you an email with the passwords to the flashdrives under separate cover.

Please let me know if you have any questions or need assistance with the electronic production of records.

Sincerely,

RYAN, SWANSON & CLEVELAND, PLLC

A handwritten signature in blue ink, appearing to read 'Jo M. Flannery', with a long horizontal flourish extending to the right.

Jo M. Flannery
Attorney of Counsel

Enclosures

cc: Phil Roberts
Client

**RAINIER COMMONS RESPONSE TO U.S. EPA CERCLA SECTION 104(e)
REQUEST FOR INFORMATION AND DOCUMENTS**

Harbor Island Superfund Site, East Waterway Operable Unit, King County, Washington

1. Identification and Association with Subject Property

- a. Provide the full legal name and mailing address of Respondent.

Rainier Commons, LLC
c/o RSC Corporation, Registered Agent
1201 Third Avenue, Suite 3400
Seattle, WA 98101

- b. The person answering these questions on behalf of Respondent:

Shimon Mizrahi, member
c/o Jo M. Flannery
Ryan Swanson & Cleveland, PLLC
1201 Third Ave, Ste 3400
Seattle, WA 98101
flannery@ryanlaw.com
(206) 654-2241

- c. Rainier Commons designates the following individuals for receiving future correspondence from the EPA concerning the EWOU:

Jo M. Flannery
Ryan Swanson & Cleveland, PLLC
1201 Third Ave, Ste 3400
Seattle, WA 98101
flannery@ryanlaw.com
(206) 654-2241 – Telephone
(206) 652-2941 – Facsimile

RSC Corporation, Registered Agent
1201 Third Avenue, Suite 3400
Seattle, WA 98101

- d. The address of the Subject Property is generally referenced as 3100 Airport Way S, Seattle Washington. Rainier Commons is the fee title owner. Rainier

Commons has owned the Subject Property from July 17, 2003 to the present.

- e. Rainier Commons does not perform any industrial or manufacturing operations at the Subject Property and never has done. Rainier Commons does not create any materials in the conduct of its business activities or operations at the Subject Property.

Rainier Commons is in the business of developing and leasing the Subject Property. The materials used by Rainier Commons include typical office supplies such as paper, pens, computer, and printer on a day to day basis. Rainier Commons has also used construction materials when building improvements on the property or carrying out maintenance activities on the property. See document production regarding hazardous substance abatement activities conducted by Rainier Commons.

- f. See documents produced herewith and indexed at 1.f and 1.g., 1.k and 1.o at a minimum as well.
- g. Copies of documents with information on the condition of the Subject Property when purchased and the beginning of the relevant time period, are included with the enclosed document production.

Rainier Commons is not located waterside. It is located a considerable distance inland, or upland from the EWOU. No fill was used by Rainier Commons at the Subject Property.

- h. Rainier Commons activities or operations at the Subject Property include the development and leasing of the property. This has included the general clean-up, repair, construction and maintenance of improvements as well as the leasing of improvements on the Subject Property. Documents relating to the early clean-up and improvements are included herewith.

Rainier Commons activities and operations do not involve the use, storage, or disposal of any materials in outdoor locations, with the exception of regular refuse receptacles and staging of construction materials from time to time as projects, such as roof repairs, or new buildings such as the coffee café have been carried out over time. Special projects involving the removal of PCB containing paint have been overseen by the EPA. Documents related to that work are provided herewith.

- i. The Farallon report investigating any possibility of releases from former or historic USTs and transformers is included with the documents produced herewith. No suspect environmental conditions were identified.

Although the EPA apparently inspected the Subject Property in or around 1990 for the purpose of identifying the possible presence of PCBs at the property, it did

not identify the presence of PCBs in the historic layers of dried applied paint on the Rainier Commons buildings at that time, nor address the matter of the possible presence of PCBs in paint with the owner and operator of the property at that time.

More than 15 years later, after Rainier Commons purchased the Subject Property, Seattle Public Utilities brought the fact that PCBs had been identified in samples of sediment in Rainier Commons' catch basins to its attention. See documents produced herewith. It was determined that PCBs were present, at varying concentrations, within the historic layers of dried applied paint, in use on the exteriors of most of the buildings at the Rainier Commons campus. To the extent that pieces of the dried applied paint were detached from the buildings, EPA has considered this a release of PCBs. Rainier Commons implemented and administers a variety of source control methods to contain and remove any detached paint chips, including the installation of filter socks on catch basins and roof drains, regular parking lot sweeping, hand collection and hand vacuuming on roofs and around buildings and so forth. See documents produced herewith. In addition, Rainier Commons has been working with EPA to develop and implement an abatement plan under its Risk Based Disposal Application. See documents produced herewith.

- j. Not applicable. Rainier Commons has not performed any dredging and plans no future dredging. It is not located on or near a waterway.
- k. Provided herewith are documents pertaining to the use, storage, or disposal of any hazardous substances, pollutants, or contaminants at the Subject Property.
- l. Provided herewith in the document production is information on electrical equipment used at the Subject Property, including transformers or other electrical equipment. EPA has inspected the property and confirmed that the transformers do not contained polychlorinated biphenyls (PCBs).
- m. The elevators and transformers are the only equipment that Rainier Commons uses that involve oils or fluids used for lubrication of machinery or other industrial purposes. Some cleaning products used at the site for day to day cleaning purposes may have *de minimis* amounts of chemicals that may fall into the definition of hazardous substances. The transformers have been inspected by EPA. The elevator contracts and electrical equipment inventory is included with the documents produced herewith.
- n. Drainage descriptions and plans or maps for the Subject Property are included with the document production in several iterations. The most recent plans would be included with the submissions to the EPA included and indexed at 1.k. Rainier Commons storm and sanitary sewer are served by catch basins on the property. Rainier Commons' lines feed into the Seattle Public Utilities system and into the King County utility system. Rainier Commons' storm and sanitary sewer lines

do not pipe into any ditches or outfall into any waterway.

There is a storm drain line that is believed to be owned or managed by WSDOT that has been broken and/or overflowed on numerous occasions causing damage to the hillside to the east of and adjacent to the Subject Property and flooded eastern portions of the Subject Property.

- o. Provided herewith are copies of documents pertaining to stormwater, drainage studies, sampling, pollution prevention and source control plans for the Subject Property.
- p. Provided herewith is the Farallon report discussing underground storage tanks that may have been present on the Subject Property (see Section 5.2 of the report). Rainier Commons has never used any USTs in its operations. Farallon did not identify any environmental conditions in connection with its UST investigation. Rainier Commons may have decommissioned one or more tanks located just east of the City of Seattle's fenced transformer area, early in its period of ownership, but was not able to locate documents relating to such possible work.

The Department of Ecology has identified a number of USTs that it relates to the address at 3100 Airport Way, but these USTs are all located on a parcel(s) of land to the west of Rainier Commons, on the other side of Airport Way on Sound Transit property.

- q. A list of Rainier Commons' current tenants is produced with the document production.

A list of Rainier Commons past tenants dating back to January of 2015 is also included in the document production.

An earlier list of prior tenants was previously provided to EPA and is included in the document production.

Rainier Commons is checking to see if it retains any information regarding former tenants that started leasing after 2010 and terminated leasing before 2015. It will supplement this response if additional information is located.

The tenants known to engage in any manufacturer activity include:

- (b) (6), Bldg 4 Unit 300 - Makes and sells clothing;
- (b) (6), Bldg 5 Unit 400 - Makes stained glass windows;
- (b) (6), 5/5A units 520/510/5A-350 - Makes and store costumes;
- (b) (6), Bldg 18 Unit 210 - Glass Blowing;
- (b) (6), Bldg 18 Unit 220 - Glass Blowing;
- (b) (6), Bldg 25 Unit 411 - Makes T-shirts, hats and promotional clothing items; and
- (b) (6), Bldg 25 Unit 410 - Makes Clothing.

- r. Not applicable. No prior or present bankruptcy filing.
- s. A list of all persons, including Respondent's current and former employees or agents, other than attorneys, who have knowledge or information about the generation, use, purchase, storage, disposal, placement, or other handling of hazardous substances, pollutants, or contaminants, or transportation of hazardous substances, pollutants, or contaminants to or from, the Subject Property would include the following:

Contact through Rainier Commons counsel as referenced above:

Doug Lansing, Project Manager
Eitan Alon, former Project Manager
Vered Mizrahi, former Project Manager
Lior Abada, former Project Manager
Conan Gale, former Property Manager
Laurie Simmons, Controller
Herzel Hazan, member

Pam Morrill, LHG previous consultant at CDMSmith
Dave Leonard, CIH current consultant at NVL
Mark Marcell, President CGI, contractor

See also documents produced herewith.

2. Financial Information

a. Enclosed in a separately marked envelope label "Business Confidential" and **NOT** for reproduction based on privacy and confidentiality for any public record request. With this segregated confidential document production are copies of Rainier Commons LLC's tax returns for the years 2015, 2016, 2017, 2018. The 2019 return is not yet available. These documents are protected as business confidential records and are being submitted in a separate envelope to specially designate, separate and protect them. It is Rainier Commons, LLC's expectation and the expectation of its individual members that these documents will be protected from public disclosure and treated with the utmost care and privacy. Rainier Commons makes this claim under 42 U.S.C. §9604(e)(7)(E) and 40 C.F.R. § 2.203. Rainier Commons is entitled to protection from public disclosure pursuant to 18 U.S.C § 1905 and 40 C.F.R. Part 2 and the procedures set forth therein.

As stated in the cover letter transmitting these confidential documents Rainier Commons is asserting its rights to the protection of its confidential records simultaneously with the transmittal of these records and is, therefore, entitled to protection against public disclosure:

The flashdrive with Confidential Business Information is segregated and delivered in a sealed envelope marked confidential. Rainier Commons asserts its

rights 42 U.S.C. §§9604(e)(7)(E) and 40 U.S.C. 2.203(b) to have this information protected and kept confidential. The information segregated as confidential has not been provided to any other party that is not bound by duties and obligations of confidentiality. Rainier Commons has taken steps to and expects to keep this information confidential. The information is not required to be disclosed or made available to the public by any other law or regulation. Disclosure of the information is likely to cause substantial harm to Rainier Commons, including its competitive position.

b. Rainier Commons' asset is the property located generally at 3100 Airport Way South, Seattle, WA 98134, along with its operating bank account related thereto. It does not own, possess or control other assets that are not listed on its tax returns (see confidential product in 2.a, above).

c. Rainier Commons is a single purpose entity. It neither is nor has been a subsidiary company. It neither is nor has been otherwise owned or controlled by, or otherwise affiliated with another corporation or entity.

3. **Insurance Coverage**

a. Rainier Commons does not have and has not purchased any type of Environmental or Pollution Clean-Up insurance. A copy of its current business owners package policy of property and commercial general liability insurance is provided with the documents produced herewith. Copies of its current excess insurance policies are also provided with the documents produced herewith. Other past policies would have to be retrieved with the assistance of its broker. But see answers above and below. No known environmental or pollution coverage is known to exist.

b. Rainier Commons has purchased property, commercial general liability and umbrella or excess insurance over the years, but see answers above and below. No known environmental or pollution coverage is known to exist.

c. Rainier Commons' insurance broker is:

Gary Kelley, Risk Management Consultant
Rice Insurance, LLC
1400 Broadway
Bellingham, WA 98225

Former Broker:
Redmond General Insurance Agency
16160 NE 80th Street
Redmond, WA 98073

d. Not applicable. To the best of Rainier Commons' knowledge no insurance claims have been made.

e. Not applicable. To the best of Rainier Commons' knowledge no insurance claims have been made. No policies have been surrendered, or cancelled. Rainier Commons did not exist prior to May 9, 2003 and, therefore, does not have any insurance policies issued prior to the advent of the pollution exclusion and the absolute pollution exclusion in or around the time frame of 1985-1986. To the best of its knowledge its insurance policies include pollution exclusions. Rainier Commons has not purchased any special purpose environmental coverage policies. It does not, therefore, believe that any of its insurance policies, issued from the time of its formation to the present date would include environmental or pollution clean-up coverage.

f. See answers above.

g. Rainier Commons does not have a formal document retention policy for all of its records. With respect to financial records it implemented the following policy, commencing in 2012:

accounts receivable and accounts payable are retained for seven years;
banking records are retained for seven years;
payroll records are retained for 10 years;
state tax documents are retained for seven years;
general ledgers are permanently retained; and
federal tax returns are permanently retained.

4. Compliance with This Request

a. The sources reviewed or consulted in responding to this request include:

i. The following persons:

Shimon Mizrahi, Member
Doug Lansing, Project Manager
Larry Hoff, Property Manager
Laurie Simmons, Controller

ii. Rainier Commons' records are currently kept in two locations:

3100 Airport Way South, Seattle, WA 98134

918 S Horton Street, # 1018, Seattle, WA 98134

E. DECLARATION

I declare under penalty of perjury that I am authorized to respond on behalf of Respondent and that the foregoing is complete, true, and correct.

Executed on 08/31, 2020.



Signature

Printed Name: Shimon Mizrahi

Title: Member

Mailing Address:
Rainier Commons
c/o RSC Corporation (Registered Agent)
1201 Third Avenue, Suite 3400
Seattle, WA 98101-3268